



**Public Service
of New Hampshire**

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A Northeast Utilities Company

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October 28, 2013

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

RE: DE 12-295, Petition for Review of Certain PSNH Charges to Competitive Suppliers
PSNH's Closing Argument

Dear Ms. Howland:

Consistent with the Commission's secretarial letter of October 8, 2013, please find enclosed Public Service Company of New Hampshire's ("PSNH") written closing argument in the above-captioned matter.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Very truly yours,

Matthew J. Fossum

Enclosures
Cc: Service List

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

PNE ENERGY SUPPLY, LLC D/B/A POWER NEW ENGLAND

Petition for Review of Public Service Company of New Hampshire's
Services and Charges to Competitive Electric Suppliers
Docket No. DE 12-295

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
CLOSING ARGUMENT

Public Service Company of New Hampshire ("PSNH" or the "Company") submits by this closing argument that PNE Energy Supply, LLC d/b/a Power New England ("PNE"), Electricity N. H., LLC d/b/a ENH Power ("ENH"), North American Power and Gas, LLC ("NAPG"), and the Retail Energy Supply Association ("RESA") (collectively, the "Suppliers") have not carried their burden to demonstrate that PSNH's charges for selection, billing and payment, and collections are unjust or unreasonable or that they require immediate revision or elimination, and they have not demonstrated that any refund is due. To the extent that the Commission concludes that there is cause to examine PSNH's charges more fully, the Commission should do so only through a cost of service study in the context of a full a rate case, and only after it has determined the proper manner for such an examination. Each issue is addressed further below.

In making this closing argument, PSNH remains mindful of the Commission's determinations that "the scope of this docket is to investigate whether PSNH's charges for customer selection, billing and collection are just and reasonable . . . [and that the docket will not be expanded] to examine the effects of the charges on the development of the competitive

market, or the effect of the charges on the profitability of competitive suppliers.” *Power New England, LLC*, Order No. 25,528 (June 25, 2013) at 5. Accordingly, PSNH intends to direct its arguments to the matters that the Commission has stated are within the scope of this proceeding, and to address issues of the “competitive market” only to the extent necessary to provide context. *See* Transcript of October 3, 2013 Hearing (“Tr.”) at 27-28.

I. Burden of Proof

Through their testimony, the Suppliers have contended that PSNH should bear the burden to prove that its charges are just and reasonable. *See* Exhibit 4, Prefiled Testimony of ENH (“Ex. 4”) at 13; Exhibit 2, Prefiled Testimony of RESA (“Ex. 2”) at 5; Tr. at 56, 80. Pursuant to New Hampshire Code of Administrative Rules Puc 203.25, however, the party seeking relief through a petition bears the burden of proof unless otherwise specified by law. PNE, not PSNH, petitioned the Commission for relief in this matter and, as such, it bears the burden. Moreover, to the extent other parties to this docket have stated that they share PNE’s position, or that they would take PNE’s place should it not act as petitioner, *see* ENH’s March 1, 2013 Objection to PSNH’s Supplemental Motion to Dismiss at 3; RESA’s March 1, 2013 Objection to PSNH’s Supplemental Motion to Dismiss at 3; *PNE Energy Supply, LLC d/b/a Power New England*, Order No. 25,468 (Mar. 5, 2013) at 7-8, they too bear any burden of proof in this matter. Furthermore, there is no provision of law that specifies that PSNH would bear the burden to prove any fact at issue in this proceeding.^{1,2} Accordingly, the burden rests with the Suppliers to demonstrate that PSNH’s charges are unjust or unreasonable. This the petitioners have not done.

¹ PSNH also notes that in Docket No. DE 13-060, PNE argued to the Commission that as the petitioning party, Staff bore the burden in that show cause proceeding. By Order No. 25,475 (Mar. 20, 2013), the Commission agreed with PNE that the petitioning party bore the burden of proof. Should PNE now contend that a party other than the petitioner must bear the burden, it would raise an argument in direct conflict with its own argument to this Commission only a few months ago.

II. Refund

The Suppliers have contended that PSNH should be required to refund certain charges collected over a period of years pursuant to a lawfully approved and effective tariff. Ex. 4 at 12-13, Exhibit 3, Prefiled Testimony of NAPG (Ex. 3) at 15. The Commission must reject such arguments out-of-hand. The Commission's authority to order a refund is defined by RSA 365:29 which states that a refund may be ordered only if the rate or charge is determined to be illegal or unjustly discriminatory. Other than conclusory claims that a refund should be made, the Suppliers present no evidence that PSNH's charges are illegal or unjustly discriminatory. In that the charges at issue have been included in PSNH's Commission-approved tariff for nearly 15 years, were added to that tariff through a proper and complete process, and have been consistently applied throughout the entirety of the time they have been in PSNH's tariff, there can be no legitimate claim that the charges were improperly collected.

Similarly, and for completeness, PSNH notes that pursuant to RSA 378:7:

Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be **thereafter** observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed.

(emphasis added). Thus, should the Commission order any changes to PSNH's charges, such changes must be prospective only. Accordingly, there is no basis upon which to order any refund, and any changes that may be ordered must be applied on a "going-forward" basis.

² The only provision of law that PSNH is aware of that could provide any basis for an argument that PSNH bears any burden is in RSA 378:8. That statute, however, applies only when a utility is seeking the right to charge higher rates. PSNH has not sought any such relief in this case.

III. Charges

PSNH addresses first certain general matters that relate to the three charges at issue. Initially, PSNH notes that these charges and the revenue from them are, and have been, treated in the same manner that PSNH treats charges and revenues from other similar sources. For example, to establish a charge for pole attachments, PSNH allocates a portion of the fully embedded costs of the poles to those entities who attach to its poles. To the extent that revenue is received from those attachers, PSNH credits that revenue to its distribution revenue requirement in the context of a rate case. PSNH treats the costs and revenues from the charges at issue here in precisely the same way and there is no compelling reason to treat them differently.

Historically, the charges at issue were based on PSNH's embedded costs and they generated revenue that was credited to PSNH's distribution revenue requirement, just as PSNH has done with its pole attachment and other revenue. Exhibit 5, Prefiled Testimony of PSNH ("Ex. 5") at 6; Tr. at 183. At the time of PSNH's last rate case the total amount of revenue was small, *see* Exhibit 11, PSNH's Response to ENH Data Request 1-2 at 2. PSNH does not dispute that the amount generated has grown since the time of PSNH's last rate case as customers have availed themselves of competitive supply options, and as competitive suppliers have availed themselves of PSNH's services. *Id.* The fact that the amount has grown since the time PSNH's current rate settlement was negotiated and approved by the Commission, however, is merely coincidental. During that same time, certain costs have also grown substantially, and, as Mr. Goodwin noted, in between rate cases the risk, for good or ill, falls upon PSNH. Ex. 5 at 7; Tr. at 204-05. The fact that the amount of revenue has grown, however, is not proof that PSNH's charges are unjust or unreasonable.³

³ To the extent that the impact of PSNH's charges on the competitive market is a matter the Commission intends to review, the growth of the revenue from the charges demonstrates, if anything, that PSNH's charges have not had the

Secondly, as to the issue of revisiting the charges, PSNH did state in 1999 that it would look to revisit at least the selection charge at a later date. Ex. 2, Attachment A at 7. Various questions were asked of PSNH about why it did not revisit these charges when the revenue from them began to grow following its last rate case. *See, e.g.*, Tr. at 135-36. As noted, however, at the same time that this revenue grew, costs also grew, and the overall impact on the Company is that it is not earning its currently allowed rate of return. Ex. 5 at 7; Tr. at 207-08, 254-55; Exhibit 7, PSNH Response to ENH Data Request 1-8. Accordingly, PSNH had no reason to believe that these specific charges, out of all of PSNH's charges and rates, required adjustment, particularly since none of the suppliers that had been operating in PSNH's territory at the time of its rate cases indicated that such a review was necessary or proper.⁴ Tr. at 207-08, 215.

Further, were PSNH expected to open a review into any specific charges or revenue streams that had either increased or decreased from some specific, prior level, it would be constantly requesting to review and adjust its rates to account for those differences. Instead, as Mr. Goodwin stated, PSNH reviews the aggregate of its income and expenses. Tr. at 207-08. At the point that an adjustment may be appropriate, PSNH will request a general change in its rates, and at that time it will, along with the Commission and other interested parties, review specific charges or revenues in the context of the Company's overall rate of return to determine where adjustments may be needed. That is the method the Commission favors, Ex. 5 at 7, fn. 1, and for good reason. As PSNH has stated during in this process, Ex. 5 at 4, 12, it is not opposed to a

effect of impeding or restricting that market and that they are not "anti-competitive." In fact, ENH stated that it had enrolled approximately 47,000 customers in PSNH's territory between July, 2012 and the time of its testimony in March, 2013. *See* Ex. 4 at 1. Similarly, NAPG stated that in its first 3 months of operation it enrolled approximately 25,000 customers in PSNH's service territory. *See* Ex. 3 at 4. In other words, the evidence presented by the Suppliers demonstrates that PSNH's charges do not appear to have a negative effect on the development of the competitive market.

⁴ As stated by Mr. Goodwin, the Company tends, in rate cases, to "the extent there is not a problem or an issue with something, tend to leave it alone, and then address in rate cases things that we think need to be addressed." Tr. at 215.

review or adjustment of these charges, and it is willing to do the review contemplated in 1999, but any such review should be accomplished through a full rate case.

Also, were the Commission to conclude that a review or adjustment to these charges should be made either within or outside the context of a rate case, PSNH submits that any changes should be based upon a thorough cost of service study. As Mr. Goodwin made clear at hearing, however, there is a fundamental disagreement between PSNH and the Suppliers about how costs are defined and how they should be allocated.

But I'm just trying to explain more the context of what the Company's position is. And, I think it's largely driven by a difference in how the suppliers and the companies are defining the appropriate cost. Where the suppliers have taken a position, to my reading of the testimony, that costs should be defined as "incremental" costs charged as a result of – directly as a result of activities to administer supplier billing and switching, incremental costs.

My view, as a utility cost of service and rate person, is a very different definition of "cost". And, so, for me, under my definition of "costs", to provide that kind of analysis would really require a very in-depth rate case-like embedded cost of service study, that's very data-intensive, *et cetera, et cetera*.

So, that's largely, aside from the fact of the single-issue ratemaking, I think -- I think the controversies around how you define "costs" and how you allocate costs, is something that is more traditionally suited for a rate case, where we have cost of service witnesses and testimony and discussion around that. Because I don't think we'll ever agree, outside of a rate case-type proceeding, on (a) what the right definition of "cost" is, and (b) how you allocate that cost.

Tr. at 153-54; *see also* Tr. at 174 ("And, I think it goes back to a disagreement as to how we're defining 'costs'. So, if you want to say that the costs are unreasonable because they're higher than our incremental cost of providing service, I agree 100 percent. We have a different definition of 'cost'.").

Prior to undertaking a cost of service study, whether as part of a rate case or otherwise, it is PSNH's position that the Commission must first determine how such a study should be done. Tr. at 174; *see also* Tr. at 247-48 (Mr. Goodwin explaining the differences between studies for short run marginal or incremental costs and studies for fully embedded costs). Those

determinations will require the Commission to make certain policy conclusions about what utility costs are, or should be, assigned to competitive suppliers and how those costs will be recovered. Tr. at 156-57. Unless and until such conclusions are made – conclusions that may well reach beyond the relationship of PSNH and the specific suppliers in this docket – a sound and useful cost of service study cannot be prepared. *Id.*

Finally, PSNH notes, as did Mr. Goodwin, that the presence or absence of various charges in different jurisdictions does not demonstrate that PSNH's charges are or are not just and reasonable. Tr. at 211-213. Comparing PSNH's charges to those in other states does not account for differences in policies or precedents of those states or the manner in which rates are set or adjusted there. As such, there is nothing in any comparison that a party may attempt to make between those charges and the charges at issue here that will yield meaningful information about the justness of PSNH's charges.

A. Selection Charge

As was noted at the hearing, PSNH did not provide a cost justification for the selection charge in 1999, but adopted in its tariff a charge that had been put in place by another utility. Tr. at 138-39. That charge has remained at \$5.00 since that time for the reasons set out above. The Suppliers have contended that the charge is unjust and unreasonable either in PSNH's practice of applying it, or on its face. PSNH addresses each argument in turn.

As to PSNH's practice in applying this provision, Ms. Tebbetts testified that the charge is assessed on a supplier at the time of an "add" or "drop" and that in instances where there is both a "drop" for a prior supplier and an "add" for a new supplier, such as when a customer changes suppliers, each supplier receives a charge. Tr. at 121. This practice is consistent with the terms of PSNH's tariff, *see* Exhibit 6, PSNH's Tariff Provision on Terms and Conditions for Suppliers

at Section 2(a), which states that the Company will be entitled to charge for “any changes” (which would include both “adds” and “drops”) initiated by a customer or supplier. This practice also recognizes that in some instances two transactions are occurring. Tr. at 250-51. Following the authorization to charge for “any changes,” the section then describes the timing of charges in various specific circumstances. Ex. 6. Insofar as PSNH is aware, it has applied this provision in the same manner for the duration of its existence without comment or complaint from any party prior to this case. Tr. at 215. In that PSNH has consistently, and without prior complaint, administered this Commission-approved charge, PSNH does not believe, and has no cause to believe, that its practice in applying the charge is unjust or unreasonable. Moreover, to the extent anything has been proven about the application of the charge it is only that the amount of revenue collected from the charge has grown over time because of external differences that have nothing to do with PSNH’s consistent application of its tariff. *See* footnote 3, *supra*. Such a showing is not proof that the charge is unjust or unreasonable.

As to the arguments that PSNH should not be able to make a charge at all, regardless of the circumstances, such arguments are without merit. The Suppliers have contended that PSNH should not be entitled to assess a charge because the incremental cost of processing the applicable EDI transactions is very low. PSNH agrees that the incremental costs are low and that the charge is higher than the incremental costs. Tr. at 174, *quoted supra*. PSNH, however, does not agree that incremental costs provide the proper measure for such charges.⁵ PSNH, as noted, contends that the proper measure for its charges is the fully embedded costs for such services and PSNH has provided evidence of the costs that it had incurred to update its systems to

⁵ Further, the suppliers in this docket were not aware of any instance in which incremental costs were used to set utility rates. Tr. at 38-39. Therefore, to adopt the Suppliers’ argument the Commission would have to break from its long-standing precedent on utility rate setting, when no evidence has been presented to support the Suppliers’ contention. No case has been presented here for such a break from the Commission’s policy.

accommodate competitive suppliers in its service territory. Tr. at 164-65. In that this charge was intended “to recover the administrative costs associated with all supplier transactions including customer enrollments, drops and moves,” Ex. 2, Attachment A at 7, it should not be based on incremental costs for specific transactions. For the reasons set out above, PSNH believes that fully allocated costs based upon a cost of service study as defined by the Commission should provide the basis for any potential change to the charge in a rate case, and not mere claims that the incremental cost does not support it.

PSNH also notes that this charge may serve an important policy goal of avoiding gaming in supply markets. If a supplier is responsible for paying a charge each time a customer begins or ends service, it may dissuade that supplier from attempting to shift customers away from its service when its potential profits are low (or even when it may experience losses) and then reclaiming them when circumstances change. For example, if a supplier believed it would lose money during a period of high energy prices relative to the money it was collecting, it could shift customers back to PSNH’s regulated rate during that high-priced period, and take them back during a period of lower prices. Such a tactic would place risk on PSNH and its customers during the time of the high priced energy. Without any charge for changing the customers’ supplier, PSNH and its customers would bear that risk without any ability to mitigate it. The Suppliers have contended that all charges should be made on a “level playing field.” So long as such potential exists, however, simply doing away with PSNH’s ability to mitigate a potential harm leaves the field “unlevel.” Accordingly, for the reasons set out above, the Suppliers in this docket have not met their burden to show that the selection charge is unjust or unreasonable either on its face or as applied, and the charge should be upheld. If the Commission concludes

otherwise, it should likewise conclude that a properly conducted cost of service study must form the basis of any new or different charge to be instituted following a rate case.

B. Billing and Payment and Collections Charges

When PSNH's charges for billing and payment and for collections services were established they were based upon cost justifications provided to, and approved by, the Commission. As noted in PSNH's pre-filed testimony, just because that cost justification is dated, that does not mean it is inadequate. Ex. 5 at 9. As with the selection charge, PSNH has maintained these charges in its Commission-approved tariff at this level, and has applied them consistently, for nearly 15 years. The Suppliers contend that these charges should be reduced or eliminated because PSNH's incremental costs of providing these services are low. As stated above, however, PSNH's charges are not, and were not, established on the basis of incremental costs. The charges at issue here, along with all of PSNH's other tariffed rates and charges are based upon PSNH's embedded costs and the suppliers have not presented any convincing argument for basing the charges for these services on PSNH's incremental costs. Accordingly, the Commission should uphold these charges.

Furthermore, suppliers are not obligated to use PSNH's billing and payment or collections services. That is a choice that the suppliers make. While it may be that the Suppliers believe that customers will have a greater degree of satisfaction if they receive a single bill with utility and supplier charges on it, suppliers are, nevertheless, not required to use PSNH's services. The choices of suppliers and the preferences of customers on the presentation of their bills are not bases upon which to set utility rates or charges.

To the extent that PSNH (and other New Hampshire distribution utilities) are required to provide the "monopoly" service of consolidated billing, PSNH has made clear that it believes

that the charges for such a service should be cost-based. Tr. at 213-14. The current charges are cost-based in that they are based on PSNH's embedded costs for these services. PSNH believes that they should continue to be so, and that they should be changed only pursuant to a cost of service study fitting within the policy determinations of this Commission as part of a rate case.

During the hearing there were questions about the possibility of customers "paying twice" for these services because the costs of these services are built into PSNH's distribution rates that are paid by all customers, and PSNH charges suppliers for these services, who may then pass those costs on to their customers. Tr. at 189. As noted, however, any revenue that PSNH collects from suppliers as a result of applying these charges is credited to its distribution revenue requirement in a rate case, thereby reducing the distribution rates paid by all customers. Further, as noted by Mr. Goodwin, whether suppliers choose to pass these costs on to their customers is not a matter over which PSNH has any control. *Id.* To the extent that a customer may "pay twice" it is as a result of the supplier making a choice to pass those costs to customers, rather than absorb them elsewhere. As with the prior arguments, PSNH should not be required to reduce or eliminate its charges on the basis of choices made by entities over which it has no control. As stated above, supplier preferences are not, and should not, be a basis for utility rate-setting. For the above reasons, the Suppliers have not carried their burden to show that PSNH's billing and payment and collections charges are unjust or unreasonable, and the charges should be upheld.

IV. Conclusion

In sum, the Suppliers in this case bear the burden of proving that PSNH's charges are not just and reasonable and they have not done so. At most, the suppliers here have shown that a further review of PSNH's charges may be appropriate. Should Commission agree that further

review is warranted, the Commission should describe the process for a cost of service study to be conducted by PSNH. As part of that description, the Commission should define, at a minimum, what “costs” are to be considered, how those costs should be allocated, and the manner in which those costs are to be recovered. The Commission should then require that the output of that study will form the basis of rate changes as part of PSNH’s next rate case.⁶ The Commission should also be mindful that in describing and defining what costs a utility may rightly charge to suppliers, and the manner in which those costs are to be recovered, its decisions will likely have a substantial impact on other utilities and suppliers that are not parties to this docket. Accordingly, the relief sought by the Suppliers here might better be addressed through a more generic proceeding about the practices and policies of New Hampshire as concerns utilities and competitive suppliers.

⁶ PSNH notes that this outcome would be in line with the relief sought in the petition giving rise to this matter. *See* October 1, 2012 Petition of PNE at ¶ 8.

Respectfully submitted,

Public Service Company of New Hampshire

October 28, 2013
Date

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached closing argument to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

October 28, 2013
Date



Matthew J. Fossum